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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

In the Matter of)
)
Amendment to Section 1.773 of) CC Docket No. 92-117
the Commission's Rules Regarding)
Pleading Cycle for Petitions)
Against Tariff Filings Made)
on 14 Days' Notice)

REPLY COMMENTS

BellSouth Telecommunications, Inc. ("BellSouth") hereby submits its Reply Comments in the above-captioned proceeding concerning whether or not the Commission's rules should be revised to provide for shorter filing periods for petitions and replies related to tariff filings made on less than 15 days notice.

Several commenters have expressed the same concern as BellSouth that timely service of petitions filed against 14-day notice filings is crucial given the short period of time proposed by the Commission for replies. Because of this, BellSouth and others have urged the Commission to require either personal delivery of the petitions to a designated representative of the filing carrier on the same day that the petitions are filed, or same-day facsimile transmission of petitions to the filing carrier's designated representative, with safeguards attached to assure transmission of a clear and complete copy.

A few of the suggestions made by commenters deserve specific comment. As Ameritech observes, whereas a filing

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carrier can time the filing of a tariff so that the interim period between petitions and replies does not fall on a weekend,¹ a petitioner could file its petition early, and thus allow for only one business day for the filing carrier to prepare and file its reply.² Ameritech suggests that, in order to avoid this result, the due date for replies be established at three days after the last day for filing timely-filed petitions. BellSouth supports this recommendation.³

Two of the suggestions made by other commenters should not be adopted by the Commission. First, AT&T suggests that the details of personal service should be worked out among the parties. BellSouth disagrees with this suggestion. The Commission can and should, with minimum effort, place into

¹ For instance, if a tariff filing is made on Monday, Tuesday, Wednesday or Thursday, then petitions will be due on the following Monday (for both Monday and Tuesday filings), Tuesday, or Wednesday, respectively.

² For instance, if a tariff filing is made on Monday, a petition could be filed early (e.g., on Friday) thus causing the file-day for the reply to advance to the very next Monday.

³ Of course, the 3-day period should not begin to run until service is actually made. Thus, Section 1.773(b)(1)(i) should read:

Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 3 days of (a) the last day upon which petitions may be filed under 1.773(a)(2)(i) or (b) the day on which the petition is actually served, whichever occurs later.

its rules the threshold requirements for service, as suggested by BellSouth in its Comments, to assure that the fundamental service requirements are understood by all concerned. Otherwise, considerable confusion and controversy could arise as to whether or not proper service has been made.

Secondly, although the Commission's Notice of Proposed Rulemaking provides notice that the Commission is considering a change only in Sections 1.4 and 1.773 of its rules, one commenter seeks to expand the rulemaking to Section 61.58 of the Commission's rules. Specifically, the Interexchange Resellers Association requests the Commission to adopt new rules regarding the notice provisions for 14-day tariff filings to require same day individual service of all such filings to all "interested" entities. This suggestion clearly goes beyond the scope of this proceeding. Fourteen-day tariff filings are, for Price Caps carriers, filings which are within band and below cap. Under the present Section 61.58 rule, no notice is required of such filings unless the filing carrier is a dominant carrier and the filing "would increase any rate or charge, or would effectuate and authorize discontinuance, reduction or other impairment of service...."⁴ Furthermore, even where such

⁴ 47 C.F.R. Section 61.58(a)(4).

notice is required under the present rule, the guidelines provided by the rule are appropriately general.⁵ A requirement that notice be provided for all 14-day tariff filings, whether or not a rate increase or service discontinuance is involved, would require modification of this provision, as would a requirement that same-day individual service be provided.

Secondly, the suggestion made by the Interexchange Resellers regarding revisions to Section 61.58 notice requirements would be unworkable. Individual service of all 14-day tariff filings by the filing carrier to all "interested" entities, by facsimile or otherwise, would simply be unmanageable from a logistical standpoint. This type of service is more appropriate for an independent commercial enterprise or agent in the business of monitoring tariff filings for its clients.

Finally, the modifications to Section 61.58 notice requirements suggested by the Interexchange Resellers Association are unnecessary. Because 14-day tariff filings under Price Caps are considered to be prima facie lawful, petitioners have the burden to prove that such a tariff

⁵ Section 61.58 of the rules states that notice "should be made in a form appropriate to the circumstance, and may include written notification, personal contact, or advertising in newspapers of general circulation."


filing is unlawful. Parties which miss the opportunity to participate in the tariff proceeding are not without recourse as the failure of the Commission to suspend or reject a tariff filing does not preclude a subsequent complaint proceeding. Moreover, the complaining party is not prejudiced by its failure to file a petition against the tariff filing as it has the same burden of proof to show the unlawfulness of the tariff provision whether challenging it by petition or by complaint.

In sum, the Commission should adopt the suggestions made by BellSouth in its Comments regarding the minimal requirements for service in person, or by facsimile of 14-day tariff filings. The Commission should also adopt a provision similar to that suggested by Ameritech regarding timing of the filing of Replies. The Commission should not adopt AT&T's suggestion that the personal service be negotiated informally, as the result would likely be confusion and controversy. Finally, the Commission should not adopt the suggestion of the Interexchange Resellers Association regarding Section 61.58 notice provisions, as

those suggestions are outside the scope of this proceeding,
are unworkable and, moreover, are unnecessary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, **BELINDA L. MAUPIN**, hereby certify that copies of the foregoing document were served by mailing true copies by First Class, United States Mail, postage prepaid to the persons listed on the attached service list.

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